

PROPERTY ASSESSMENT APPEAL BOARD
FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

PAAB Docket No. 2015-100-00086R

Parcel No. 09-05-302-020

DENNIS E. & BARBARA L. GANO,

Appellants,

v.

CITY OF AMES BOARD OF REVIEW,

Appellee.

Introduction

This appeal came on for hearing before the Property Assessment Appeal Board (PAAB) on October 14, 2015. Attorney Michael Gano of Gano Law in Des Moines, represented Dennis and Barbara Gano. Assistant Ames City Attorney Mark O. Lambert represented the City of Ames Board of Review.

The Ganos are the owners of a residential property located at 4401 Timber Ridge Drive, Ames, Iowa. The subject property is a one-story dwelling with 2148 total square feet of living area, a full basement with 1790 square feet of living-quarters finish, and an 838 square-foot attached garage constructed in 2013. It is also improved by an open porch and a screened porch. The dwelling is listed in normal condition and with excellent construction quality. It is situated on a 0.603-acre site.

The property's January 1, 2015, assessment was \$520,100, allocated as \$126,900 in land value and \$393,200 to dwelling value. The Ganos' protest to the Board of Review claimed the assessment was not equitable as compared with assessments of other like property in the city and that the property was assessed for more than the value authorized by law under Iowa Code sections 441.37(1)(a)(1) (a) and (b). The Board of Review denied the protest. The Ganos then appealed to this Board and assert the property's correct value is \$484,623.

Findings of Fact

Dennis Gano testified they paid more for the house than it was worth because of its one-story construction and proximity to work and family. He believes the \$95,000 sale price in June 2014 should be the current land value, despite the site improvements made to the property in the interim. Gano indicated he is most concerned about the allocation between land and improvement value.

The Ganos believe their land is assessed higher per-square-foot than neighboring properties on Timber Ridge Road. They report the average assessed land value per-square-foot was \$3.48, while their property is assessed at \$4.83 per-square-foot. They identified the following properties for comparison listed from smallest to largest size. (Exhibit 1).

Address	Lot Size	Assessed Land Value	AV Land PSF
Subject - 4401 Timber Ridge	26,271	\$126,900	\$4.83
4317 Timber Ridge	30,573	\$137,600	\$4.50
4400 Timber Ridge	35,243	\$138,600	\$3.93
4414 Timber Ridge	38,849	\$127,100	\$3.27
4307 Timber Ridge	39,686	\$146,900	\$3.70
4300 Timber Ridge	123,570	\$248,500	\$2.01

The Ganos calculated the average price per-square-foot (total assessed values of all properties divided by total square feet of lot size) and multiplied this figure by the total square feet of their site (\$3.48 X 26,271 square feet) to arrive at their land value estimate of \$91,423. This approach is not a recognized and accepted method of valuation. We note that the price per-square-foot of a property, all else being equal, may decrease as a property's size increases. See APPRAISAL INSTITUTE, THE APPRAISAL OF REAL ESTATE pp. 31-32 (14th ed. 2013) (discussing the law of decreasing returns). Thus, the Ganos' method utilizing properties larger than the subject, without adjustment, would likely undervalue the subject property.

The Ganos also applied a similar methodology to other land sales in and around Ames, including three land sales in the subject's subdivision. (Exhibit 4). We decline to

give any consideration to those land sales outside the subject's subdivision because the Ganos provided no evidence to show the location of those land sales would be considered comparable to the subject in the market. Of the three sales in the subject's subdivision, one of the sales appears to involve related parties and occurred in December 2012 (4400 Timber Ridge Drive), which has minimal relevance to a 2015 assessment appeal. Another sale (4307 Timber Ridge Drive) occurred after the assessment date in May 2015 and also appears to involve related parties. (Exhibit 5). All of these properties are larger than the subject. Consistent with the law of decreasing returns, it would be expected that these larger sites would have a lower sales price per-square-foot than the subject. Again, the Ganos' method of averaging sales prices or assessments of larger sites would tend to undervalue the smaller subject site.

In addition, the Ganos examined the assessment/sales ratio of four land sales in and near Ames over the last 3 years. (Exhibit 6). As previously explained, we decline to give any consideration to land sales outside the subject's subdivision absent a showing that those site locations are viewed as comparable to the subject's location in the market. Only one was located in the subject's subdivision (4400 Timber Ridge Drive). Per the Ganos' calculation, 4400 Timber Ridge Drive has an assessment/sales ratio of 0.93 compared to the subject's ratio of 1.34. This would suggest the subject's land value is assessed at a higher proportion of its fair market value than 4400 Timber Ridge Drive.

An assessment/sales ratio is usually completed by comparing the current year assessment (in this case, 2015) to a prior year's sale (2014). The 4400 Timber Ridge Drive site sold in December 2012, while the subject site sold in 2014. We question the Ganos' use of a 2012 sale to conduct this assessment/sales ratio analysis. We again note that the 4400 Timber Ridge Drive sale appears to involve related parties and may not be a normal, arm's length transaction. Further, we do not find the comparison of single assessment/sales ratio is sufficient to demonstrate the subject is inequitably assessed.

Documents also show the subject property's land is assessed at \$126,900, while it was sold for \$95,000 in June 2014 (Exhibit 3). The Ganos believe this sale supports

their over-assessment claim. The record indicates the property transferred from Hunziker Land Development Company LLC to Hunziker, Christy, Shirk Builders Inc., which appear to be related entities. At the PAAB hearing, counsel for the appellants, Michael Gano, suggested that the Board of Review and Assessor agreed this sale was a normal, arm's length transaction at the Board of Review hearing. The Board of Review's counsel, Mark Lambert, disagreed with this characterization. The Board of Review minutes do not suggest any opinion, either by the Board of Review or the Assessor, about whether this sale was a normal transaction. Regardless of whether it is a normal sale, Iowa case law indicates that one sale may not, by itself, be sufficient to conclusively establish market value. *Riley v. Iowa City Bd. of Review*, 549 N.W.2d 289 (Iowa 1996).

City Assessor Greg Lynch testified on behalf of the Board of Review. He explained that city assessments are based on a sales model rather than a cost model. A new model was developed and applied in 2014 to newer homes. The 2015 assessments were adjusted, upward or downward, based on sales trends and assessment/sales ratio studies. Lynch testified the 2014 assessment/sales ratio was 0.94; indicating residential properties were probably assessed below market value. He further clarified that the focus is on the accuracy of a property's total value, not the separate land and improvement values. Lynch also explained that several of the land assessments identified by the Ganos were under the plat law, which significantly reduces their value, and some were non-market transfers between related entities, not necessarily reflecting their fair market value.

Lynch agreed with the Ganos that the land value for property located at 4400 Timber Ridge was under-assessed as compared to the subject's land value. He stated that assessment was the result of an error and would be corrected. Lynch reported that residential properties are generally not valued by the square-foot method used in the Ganos' exhibits but rather on a per site method. He testified that larger lots are valued less per-square-foot than smaller lots and that premium features, such as timber and view, are considered in valuation, as well.

The Ganos did not submit any evidence of the fair market value of their property such as comparable sales, an appraisal, or a comprehensive market analysis. The most recent indication of value is the Ganos' \$542,000 purchase price in September 2014. Because the Ganos' 2015 assessment is \$520,100, which is less than their 2014 purchase price, this evidence contradicts their claim of over-assessment.

Conclusions of Law

PAAB has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A (2015). PAAB is an agency and the provisions of the Administrative Procedure Act apply to it. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). PAAB considers only those grounds presented to or considered by the Board of Review, but determines anew all questions arising before the Board of Review related to the liability of the property to assessment or the assessed amount. §§ 441.37A(1)(a-b). New or additional evidence may be introduced, and PAAB considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-Vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption that the assessed value is correct. § 441.37A(3)(a). However, the taxpayer has the burden of proof. § 441.21(3). This burden may be shifted; but even if it is not, the taxpayer may still prevail based on a preponderance of the evidence. *Id.*; *Richards v. Hardin County Bd. of Review*, 393 N.W.2d 148, 151 (Iowa 1986).

In Iowa, property is to be valued at its actual value. Iowa Code § 441.21(1)(a). Actual value is the property's fair and reasonable market value. § 441.21(1)(b). Market value essentially is defined as the value established in an arm's-length sale of the property. *Id.* Sale prices of the property or comparable properties in normal transactions are to be considered in arriving at market value. *Id.* Conversely, abnormal sales not reflecting market value shall not be taken into account or must be adjusted to eliminate the effect of factors which distort market value, including but not limited to sales to immediate family of the seller, . . . [or] discounted purchase transactions. *Id.*

The Ganos' sole concern is the assessed value of the property's land. The Board of Review contends that the evaluation of an equity or overassessment claim

must consider the property as a whole. To this point, the IOWA REAL PROPERTY APPRAISAL MANUAL states:

When appraising real estate, the assessor must consider two separate entities; land, which is the nonwasting portion of the real estate; and improvements, which are the wasting portion subject to various forms of depreciation. Land and improvements are frequently valued separately so that the trends and factors affecting can be studied. However, the final analysis for an improved property must be as a unit.

In examining the evidence presented in this case, our primary concern is with the property's total assessment, encompassing the land and improvements.

To prove inequity, a taxpayer may show that an assessor did not apply an assessing method uniformly to similarly situated or comparable properties. *Eagle Food Centers v. Bd. of Review of the City of Davenport*, 497 N.W.2d 860, 865 (Iowa 1993). Alternatively, a taxpayer may show the property is assessed higher proportionately than other like property using criteria set forth in *Maxwell v. Shivers*, 133 N.W.2d 709 (Iowa 1965). The six criteria include evidence showing

“(1) that there are several other properties within a reasonable area similar and comparable . . . (2) the amount of the assessments on those properties, (3) the actual value of the comparable properties, (4) the actual value of the [subject] property, (5) the assessment complained of, and (6) that by a comparison [the] property is assessed at a higher proportion of its actual value than the ratio existing between the assessed and the actual valuations of the similar and comparable properties, thus creating a discrimination.”

Id. at 711. The *Maxwell* test provides that inequity exists when, after considering the actual and assessed values of comparable properties, the subject property is assessed at a higher proportion of this actual value. *Id.* The *Maxwell* test may have limited applicability now that current Iowa law requires assessments to be at one hundred percent of market value. § 441.21(1). Nevertheless, in some rare instances, the test may be satisfied.

We find the Ganos have not established inequity in their assessment. First, the Ganos' focused solely on comparisons of land values and did not address the equity of the subject and their comparables as units. Second, the variation in the land values is

explained, in part, by the subject's smaller site size. Consistent with valuation methodology, smaller sites tend to have higher values on per-square-foot basis.

Third, the majority of the land assessment and land sales information submitted by the Ganos involved properties located outside of the subject's subdivision. Of the three land sales in the subject's subdivision, two involved related parties and one of these sales occurred more than two years before the 2015 assessment. These factors limit the reliability of an assessment/sales ratio equity analysis.

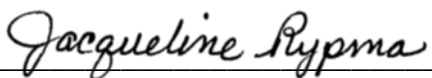
In an appeal alleging the property is assessed for more than the value authorized by law under Iowa Code section 441.37(1)(a)(1)(b), the taxpayer must show: 1) the assessment is excessive and 2) the subject property's correct value. *Boekeloo v. Bd. of Review of the City of Clinton*, 529 N.W.2d 275, 277 (Iowa 1995). A comparison of the subject property's 2014-sale price of \$542,000 to its 2015 assessment of \$520,100, does not support a finding of over-assessment. The Ganos did not offer any evidence from which this Board could conclude that the property's assessment is more than its fair market value. Ultimately, the Ganos' evidence failed to establish the subject property was over-assessed.


Order

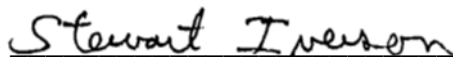
IT IS THEREFORE ORDERED that the City of Ames Board of Review's action is affirmed.

This Order shall be considered final agency action for the purposes of Iowa Code Chapter 17A (2015). Any application for reconsideration or rehearing shall be filed with PAAB within 20 days of the date of this Order and comply with the requirements of PAAB administrative rules. Such application will stay the period for filing a judicial review action. Any judicial action challenging this Order shall be filed in the district court where the property is located within 20 days of the date of this Order and comply with the requirements of Iowa Code sections 441.38; 441.38B, 441.39; and Chapter 17A.

Dated this 9th day of November, 2015.


Jacqueline Rypma, Presiding Officer


Karen Oberman, Board Member


Stewart Iverson, Board Chair

Copies to:

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